

*United States Court of Appeals
for the
District of Columbia Circuit*

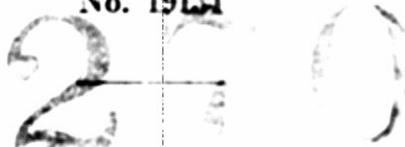


**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19134



HENRY W. JACKSON, APPELLANT

v.

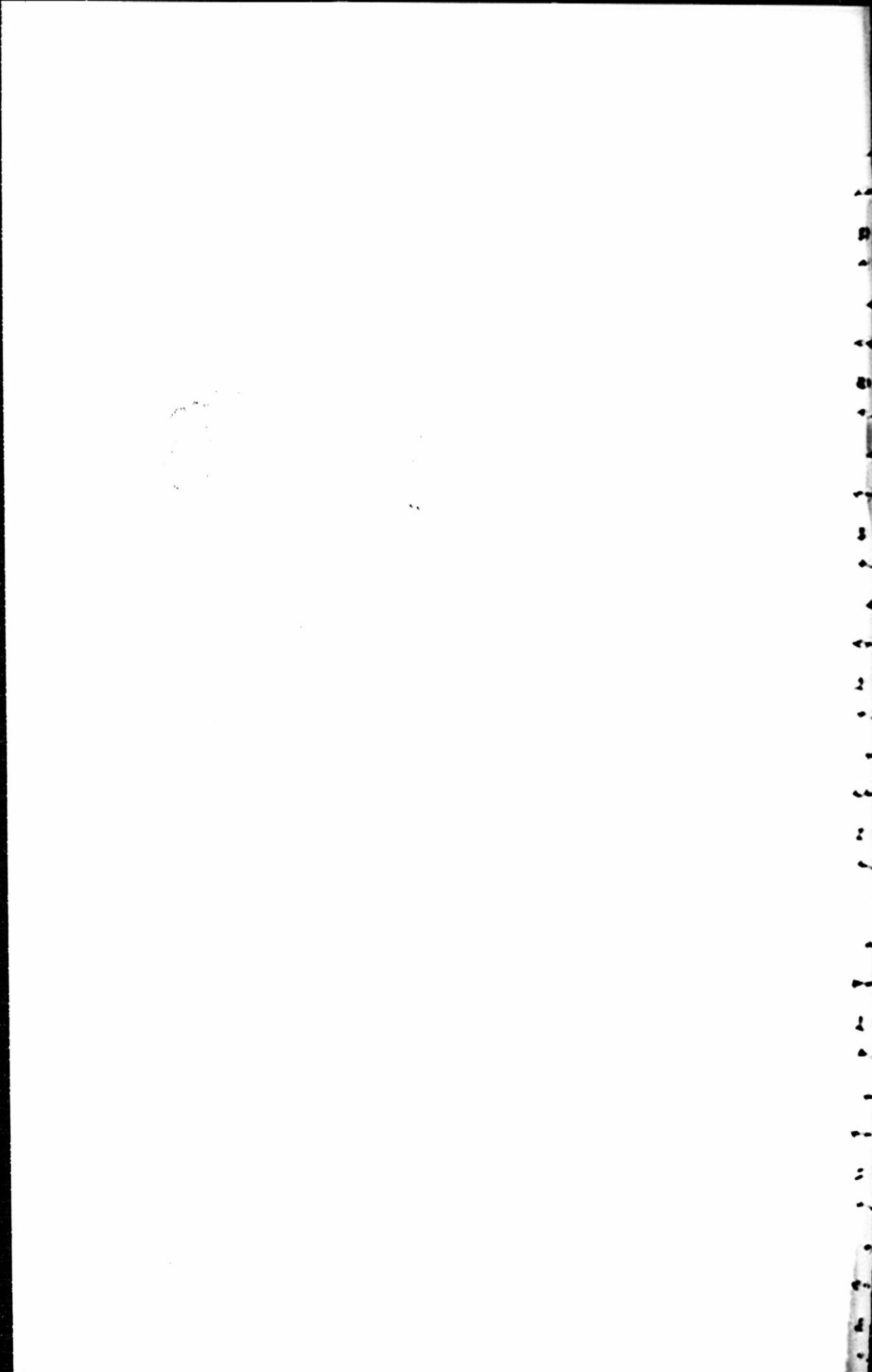
UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

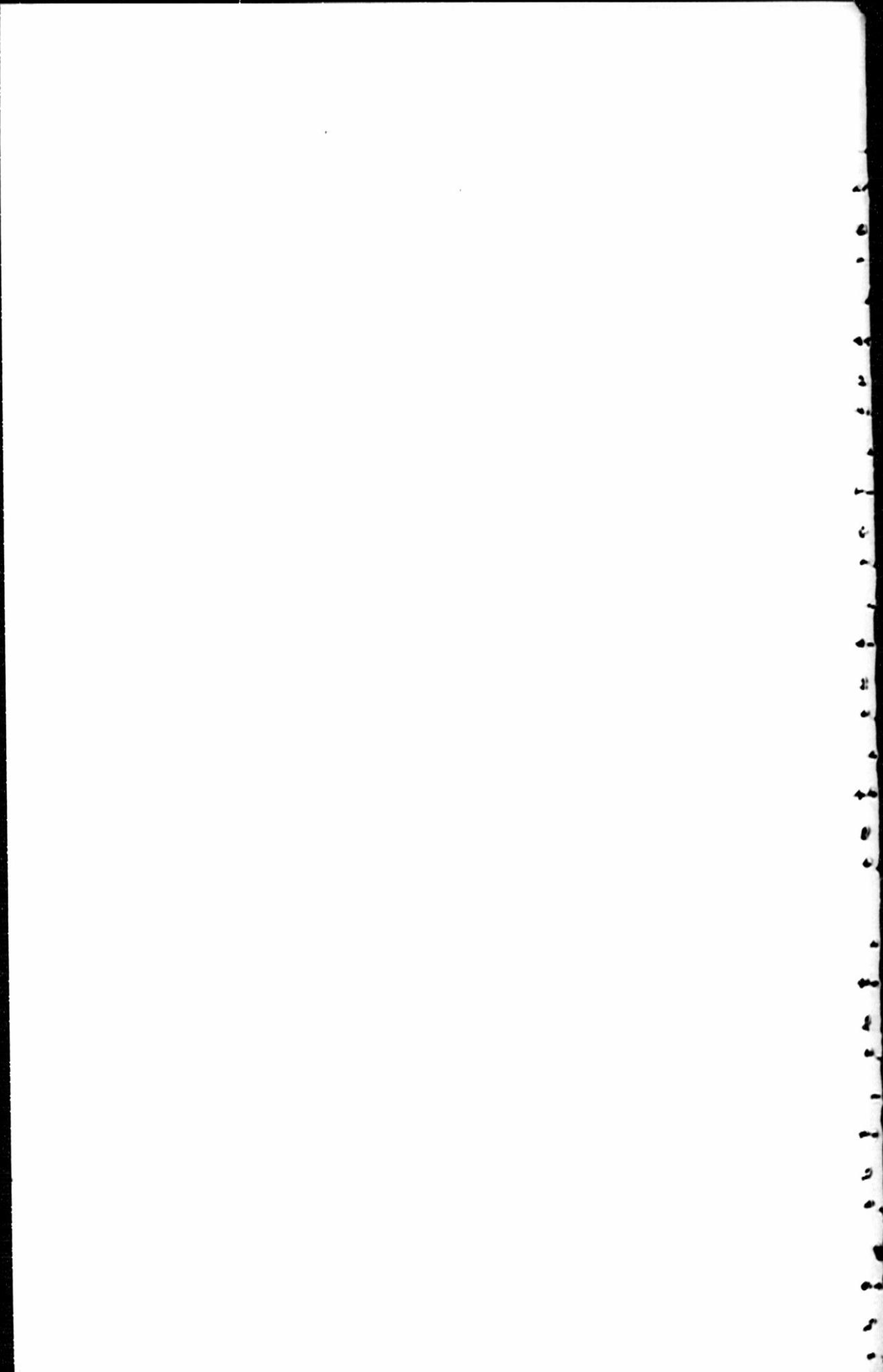
JOSEPH A. LOWTHER,
FRANK Q. NEBEKER,
Assistant United States Attorneys.

Cr. No. 5-63



QUESTION PRESENTED

Did the District Court properly find probable cause for police to arrest appellant Jackson after a disclosed, previously reliable informant told police officers that Jackson possessed narcotics and gave a thorough description of Jackson and his exact location, and this information led the police directly to Jackson?

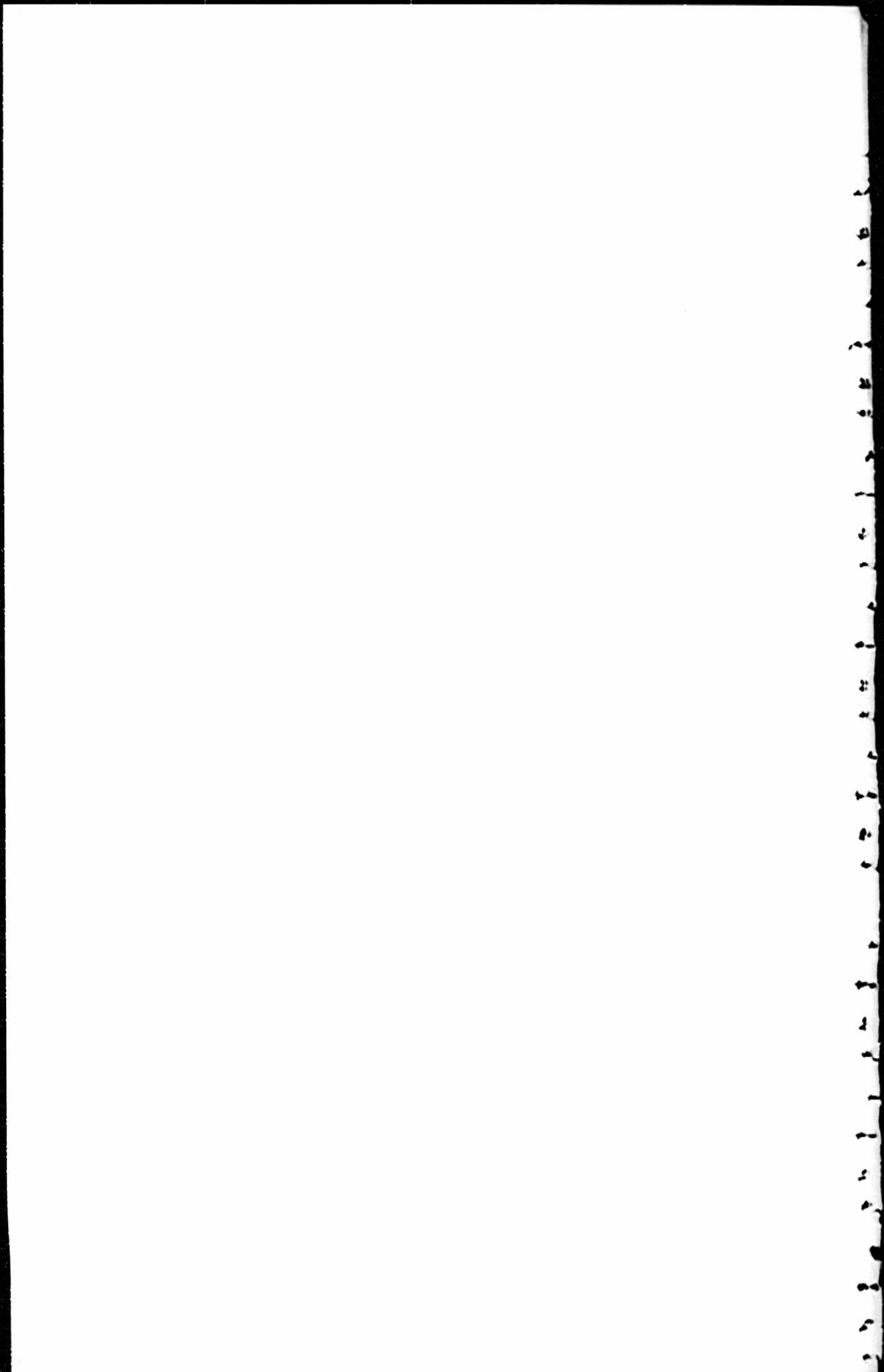


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No. 19134

HENRY W. JACKSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant Jackson was charged with two violations of the narcotics laws (count one: 26 U.S.C. § 4704(a); count two: 21 U.S.C. § 174) in an indictment filed January 7, 1963. Jackson waived trial by jury and was tried by the court on September 16, 1963. Judge McGarraghy found Jackson guilty as charged and imposed concurrent sentences of eight months to two years on count one and seven years on count two. On the first appeal (No. 18225) this Court remanded the case on August 7, 1964, with directions to the District Court to hold a hearing on the issue of the informant's reliability. *Jackson v. United*

States, 118 U.S. App. D.C. 341, 336 F.2d 579 (1964). Such a hearing was held on December 4 and December 21, 1964, before Judge McGarraghy, who found the informant reliable on the basis of information she had previously given to the arresting police officer. He then affirmed his prior finding of the existence of probable cause for Jackson's arrest (Transcript of remand hearing, hereinafter cited as "Tr.", 66-68). Several other issues were raised on the earlier appeal but are not being pressed at this time (See briefs for appeal No. 18225). In his concurring opinion on the remand of this case, Judge Bazelon raised an issue as to the defendant's sanity and argued for a trial on the merits of this issue. On remand, the trial judge offered to entertain a motion for a new trial so that the issue of insanity could be raised in that context, but the defendant (who was represented by counsel) declined after being advised by the court that the sanity issue would be foreclosed at a later time (Tr. 10). The only issue raised on this appeal is the reliability of the informant.¹

Testimony at the hearing

Only two witnesses testified at the hearing. Officer Michael Bello of the Metropolitan Police Department, assigned to the 13th Precinct, was called for the Government. He testified that Ethel Gaskins, the informant, had given him information concerning at least three illegal activities in the year prior to November 15, 1962, at which time she told him about appellant Jackson's possession of narcotics (Tr. 22). Officer Bello specified the activities as involving an illegal establishment at 1342 T Street, N.W., another at 1350 or 1352 Swann St., and a prostitute named Mary Sales (Tr. 22). Officer Bello described Miss Gaskins' information on previous occasions as "reliable" and asserted that arrests and convictions

¹ The insanity issue, earlier raised on appeal, and not reached by this Court has now been abandoned and "finally disposed of" (Tr. 10). Therefore, it is not now available for decision by this Court.

for vice violations resulted from her information (Tr. 23).

Officer Bello testified that on November 15, 1962, Ethel Gaskins approached him and a fellow officer and volunteered information that Jackson possessed narcotics (Tr. 24), giving the name and location of the store where he could be found and Jackson's name, physical description and clothing (Tr. 25). Acting on this information, the police went directly to the Franklin Delicatessen, where they found a man answering the physical description and wearing the clothes indicated by Miss Gaskins (Tr. 25-26). That man was the appellant Jackson, and he was arrested on the spot (Tr. 26).

On cross-examination, Officer Bello testified that he had frequent contact with Miss Gaskins during the period before Jackson's arrest (Tr. 27), that he had never arrested Miss Gaskins (Tr. 28), that all information concerning the other three illegal activities was received prior to Jackson's arrest (Tr. 28-30), and that Miss Gaskins had volunteered information three or four times before (Tr. 35). Officer Bello also testified that to the best of his knowledge Ethel Gaskins was not a paid informer of the police (Tr. 41).

Ethel Gaskins was then called for the defense. She denied giving Officer Bello information about the three activities specified by him or any other illegal activities, including Jackson's possession of narcotics (Tr. 44-45). She recognized Officer Bello in the courtroom (Tr. 42), but she testified that it was he who approached her on November 15, 1962, and on other occasions (Tr. 43). She stated that she tried to avoid Officer Bello as much as possible, but admitted talking to him on at least three occasions (Tr. 46). She also admitted that she was presently in prison (Tr. 41), that she knew Jackson (Tr. 45), that she saw a great deal of him (Tr. 48), and that she spoke with Officer Bello on the day of Jackson's arrest (Tr. 42).

On cross-examination, Ethel Gaskins admitted that Jackson was a good friend of hers (Tr. 48), that she

knew he was an addict (Tr. 50), and that she saw him enter a store prior to his arrest on November 15, 1962 (Tr. 52).

Both witnesses were recalled on the issue of the relationship between Jackson and Miss Gaskins. Officer Bello, contrary to his testimony at the original trial, testified that Miss Gaskins told him that she was Jackson's girl and Jackson would not share his narcotics with her (Tr. 56-60). Miss Gaskins was recalled and denied this testimony (Tr. 61).

The finding

The trial judge stated: "I find on the basis of the record before me that she was a reliable informant based upon information she had previously given. Therefore, I find that there was probable cause which warranted the arrest by the officers in this case. Under these circumstances, I make such a finding and hold that the arrest was lawful, which is the only issue presented to this Court on remand." (Tr. 67-68.)

STATUTES INVOLVED

None are now involved.

SUMMARY OF ARGUMENT

Confronted with evidence that Ethel Gaskins had previously given information to police which was reliable and resulted in arrests and convictions, the trial judge could properly conclude there was probable cause for police officers to believe her information and arrest appellant Jackson. Miss Gaskins' information, which detailed the nature of the crime being committed by Jackson, his location, name, physical description, and clothing, was corroborated by the fact that it led police officers directly to the store and to appellant Jackson. Although Miss Gaskins subsequently testified that she did not provide Officer Bello with information, either prior to or concerning this

case, the judge was free to disbelieve her testimony and conclude that Officer Bello could have found her to be a reliable informant.

ARGUMENT

In its original opinion remanding this case to the District Court, this Court stated:

"Information received through an informant may be relied on if 'the information given is sufficiently accurate to lead officers directly to the suspect,' *Wong Sun v. United States*, 371 U.S. 471, 480 (1963), 'so long as a substantial basis for crediting the hearsay is presented,' *Jones v. United States*, 362 U.S. 257, 269 (1960). Such a substantial basis exists where '[t]he informant had previously given accurate information. His story was corroborated by other sources of information. And petitioner was known by the police' *Id.* at 271. Thus there are 'requirements of reliability and particularity,' *Wong Sun v. United States*, *supra*, 371 U.S. at 479; the information must not be 'too vague' or 'from too untested a source.' *Id.* at 482. *Here our major concern is with the reliability of the informant as demonstrated by information she had previously given.*" *Jackson v. United States*, *supra* at 342, 336 F. 2d at 580 (emphasis added).

The main purpose of the hearing on remand was to determine whether or not there was "a substantial basis for crediting the hearsay" of Ethel Gaskins, who provided police officers with the information leading to appellant Jackson's arrest. *Jones v. United States*, 362 U.S. 257, 269 (1960). Such a substantial basis exists if Miss Gaskins' information was not "too vague" and if she is not considered "too untested a source." *Wong Sun v. United States*, 371 U.S. 471, 482 (1963).

There is little question that Ethel Gaskins' information was thoroughly detailed and that it was "sufficiently accurate to lead officers directly to the suspect." *Id.* at 480. Her detailed description of Jackson's name, appear-

ance, dress, and location led Officer Bello and his fellow officer directly to Jackson, whom they did not know, in the Franklin Delicatessen (Tr. 25-26). Nor is there any doubt that Ethel Gaskins was a "tested source." On three prior occasions, involving two specified illegal establishments and one named prostitute, Miss Gaskins' information to the same Officer Bello had resulted in arrests and convictions for vice violations (Tr. 22).

Ethel Gaskins took the witness stand for the defense and denied her role as an informer in prior cases and in this case. This raised an issue of credibility, which the court resolved in favor of Officer Bello and which cannot be disturbed on appeal. *Daniels v. Souders*, 90 U.S. App. D.C. 298, 195 F.2d 780 (1952).

The fact that the Court disbelieved her subsequent testimony cannot by relation back affect Officer Bello's right to act on her information. The proper test is whether Officer Bello, at the time he received her information about Jackson, had a substantial basis for believing her and probable cause to act. "Probable cause" exists when facts and circumstances within the officer's knowledge and "of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Carroll v. United States*, 267 U.S. 132, 162 (1924). Her subsequent conduct is irrelevant.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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